## IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NORTH CAROLINA ASHEVILLE DIVISION

**CIVIL NO. 1:06CV127** 

JONATHAN PATRICK FOXX, and FOXX TRUCKING, INC.,	)
Plaintiffs,	)
Vs.	ORDER
JOAQUIN MENDINA, and FJK ENTERPRISES LTD., CO., d/b/a EXPRESS CARRIERS,	) ) )
Defendants.	) ) )

**THIS MATTER** is before the Court on the Memorandum and Recommendation filed by the Magistrate Judge on August 17, 2006.

Pursuant to 28 U.S.C. § 636(b) and the standing Orders of

Designation of this Court, United States Magistrate Judge Dennis L.

Howell, was designated to consider pending motions in the captioned civil action and to submit to this Court recommendations for the disposition of these motions.

On August 17, 2006, the Magistrate Judge filed a Memorandum and Recommendation in this case containing proposed findings of fact and

conclusions of law in support of a recommendation regarding the motion of Defendant FJK Enterprises, Ltd. Co., d/b/a Express Carriers ("Express Carriers") to dismiss and/or stay proceedings filed May 8, 2006. The parties were advised that any objections to the Magistrate Judge's findings were to be filed in writing within 14 days of service of the Recommendation; the period within which to file objections expired on September 5, 2006. No written objections to the Memorandum and Recommendation have been filed.

After a careful review of the Magistrate Judge's Recommendation, the Court finds that the proposed findings of fact are supported by the record and that the proposed conclusions of law are consistent with current case law. Accordingly, the Court hereby accepts the Magistrate Judge's Recommendation that the Defendant's motion be denied.<sup>1</sup>

IT IS, THEREFORE, ORDERED that the Defendant Express

Carriers' motion to dismiss and/or stay is hereby **DENIED**.

<sup>&</sup>lt;sup>1</sup> As grounds for his ruling, the Magistrate Judge stated that Plaintiff's counsel had advised that the civil action pending in the Arkansas state court was being dismissed. Plaintiff's counsel has now filed a Memorandum of Action and attached thereto an Order of Voluntary Nonsuit filed in the Circuit Court of Pulaski County, Arkansas, on June 13, 2006. See Memorandum of Action, filed September 5, 2006.

Signed: September 7, 2006

Lacy H. Thornburg United States District Judge